

Agenda

Item #11



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: June 20, 2008

Re: Current Practices of Commission Staff regarding Providing Advice

This is to provide you with background information regarding the current practice of the Ethics Commission staff in offering advice to individuals and organizations that are regulated by the Commission. If you are considering curtailing our current practice of offering advice, we hope you will consider the full range of our activities in this area.

Who asks for advice?

A large portion of our advice is sought by individuals and organizations that are regulated by the Commission and must file campaign finance or lobbyist reports with our office:

- 500+ county and legislative candidates
- roughly 125 political action committees (PACs)
- dozens of state, county, and municipal committees of the political parties
- lobbyists who file reports for one or multiple clients

Some questions come from candidates or others who are engaged in politics for the first time.

Others have only intermittent contact with political campaigns (i.e., every two or four years).

Many individuals asking for advice are not political professionals or lawyers, and are not accustomed to looking for answers in statutes or regulations. They want to receive advice based on the current law, and they feel most comfortable turning to the Commission staff.

Many questions received by the Commission relate to what information must be included in a campaign finance or lobbyist report that must be submitted to the Commission. While the staff has made strides in improving the Commission's written advice through published guidebooks and pamphlets, some filers do not know these resources exist or have questions that go beyond the general guidance in these publications. Or, they want to make sure that they are applying the written guidance correctly to their particular situation.

Interest in Quick and Confidential Advice

In many cases, these individuals are looking for quick advice. It is not uncommon for the staff to be consulted "at the last minute" before a candidate or committee makes a purchase or makes a decision about campaign literature.

Sometimes, the individuals or groups seek advice about a campaign transaction or activity that they would like to keep confidential – even if the matter is quite routine. For example, some questions concern a purchase for campaign goods or services that a candidate, party committee, or PAC would rather not disclose to their political opponents until it is required under campaign finance disclosure laws. These individuals do not necessarily want their question to be released in a public forum such as the Commission's website or a written memo discussed at a public meeting of the Commission.

Role of Advice in Administering the Maine Clean Election Act

Staff advice plays an especially important role in administering the Maine Clean Election Act. The Commission pays out more than \$3 million every election year to legislative candidates

alone. In the past three elections, the Commission has clarified its standards for which expenditures are considered campaign-related, and has increased the demands on candidates to report their expenditures precisely and accurately. The 2006 audit program raised the visibility of the Commission's oversight role. Many candidates contact us to obtain advice on campaign purchases or reporting because they "want to do it the right way." These candidates are turning to Commission or its staff as subject matter experts and are fearful of repercussions if they make a wrong purchase or misreport their activity. We believe offering advice is important to the integrity of the public financing program.

Examples of Advice Sought

Some of the questions received by staff are quite routine because they are clearly answered by existing law, past practice, or past advice approved directly by Commission members:

- My PAC would like to spend some money on polling. Is that allowed? *[PAC]*
- I am going to receive a refund from a radio station on an advertisement that did not run. How should I report that? *[candidate or PAC]*
- I would like to purchase a palm card? Which expenditure code should I use to report that on Schedule B? *[candidate]*
- I spent money on educational materials that I handed out at a dinner at which several Legislators will attend. How do I report that cost in my monthly report? *[lobbyist]*
- When I wait at a legislative meeting room for a public hearing to begin, is that lobbying? *[lobbyist]*

Other questions are more complex because they involve an unusual factual situation or the law or Commission procedures does not provide a clear answer.

Which Commission employees provide advice?

Every election year, the staff provides advice to many of the 500+ county and legislative candidates regulated by the state's campaign finance laws. Advice to candidates is primarily made by our three registrars (Gavin O'Brien, Sandy Thompson, and Sharon Timberlake). PAC/Party/ Lobbyist Registrar Jeremy Brown gives advice to some of the roughly 125 PACs, dozens of political party committees, and lobbyists that are required to file reports with the Commission. The Commission Assistant, Cyndi Phillips, will give out basic information that is available on the Commission's website and advice on how to file reports electronically on the Commission's website. Assistant Director Paul Lavin and I provide advice on a less frequent basis, usually regarding a more complex or unusual factual situation or when the party seeking advice wishes to discuss a specific statute.

How much advice is provided?

The amount of advice provided in a single day by the Commission staff varies greatly depending on the part of the election year. On a slow day, Gavin, Sandy, Sharon, and Jeremy may each provide only 3-4 pieces of advice each day, for a total of 12-16 conversations. During busy periods, those four employees alone could easily provide more than 50 pieces of advice in a single day.

Precautions Taken by Staff in Offering Advice

The staff is keenly aware of some of the pitfalls in offering advice and we strive to take appropriate precautions:

- *Questions based on factual presumptions or incomplete information.* Sometimes telephone callers do not know all of the facts necessary to offer advice. In those

situations, we will decline to provide advice or will ask the caller to provide the additional information necessary.

- *Gray areas.* If a question is in a gray area or is complex, the Commission staff may decide not to offer any advice. If any advice is offered, we usually are clear that the advice is coming from the staff rather than the Commission. We underscore that advice from the staff is not binding on the Commission. We also offer to let the questioner bring the matter directly to you for an answer if they wish, which sometimes occurs.
- *Highly contested situations.* We are aware that elections are inherently competitive and that some campaigns are highly contested and emotional. We know that actions by candidates, PACs, or party committees could later be the subject of a complaint filed with the Commission. We try to have our antennae raised for such highly contested situations, and are particularly cautious in giving advice in these cases.

Improving Relations with the Legislature

The staff has a delicate job of raising issues with candidates who have not provided complete information in campaign finance reports or filed reports on time. We also audit 20% of Maine Clean Election Act candidates. While most candidates appreciate the Commission's role and responsibilities, our inquiries are not always appreciated. Providing strong customer service (including offering prompt advice) is an important way for the Commission to maintain good relations with the Legislature. We like to believe we have improved this aspect of the Commission's operations in the last few elections and it is not unusual for us to be thanked for our efforts.

Statutory Authority to Provide Advice

Offering advice to the communities regulated by the Commission is not explicitly included among the statutory duties of the Commission. Likewise, the Commission's statutes do not require the Commission to maintain a website that contains a good deal of explanatory information, to publish comprehensive guidebooks for candidates and other educational

materials, or to participate in trainings of candidates organized by the political parties. The Commission has proceeded with these educational activities without explicit statutory authority in order to encourage compliance with campaign finance and lobbyist disclosure laws. The Commission staff believes that providing advice and answering questions should be viewed as a necessary part of its work as an administrative agency of the State of Maine.

Future Reporting to Commission on Advice

The staff understands that the members of the Commission need to be confident about the staff's day-to-day activities. If you require it, we can provide you with a log or report of advice we have given. Please keep in mind that many questions that we answer are routine in nature and that many parties asking questions desire confidentiality. Also, as you consider the scope of any log or report you need, please remember that assigning new tasks to Commission employees is a zero-sum game in that most employees only work an 8-hour day. If, for example, during a busy period, a Commission employee spent 30 minutes typing entries into a log or report, that is 1/16 of his or her workday which will not be spent on other job responsibilities. Thank you.